West Coast Expressway Sdn Bhd v Pentadbir Tanah Daerah Klang

HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NOS BA-24NCVC-1392–11 OF 2018, BA-24NCvC-1394–11 OF 2018, BA-24NCvC-1398–11 OF 2018, BA-24NCvC-1400–11 OF 2018, BA-24NCvC-1402–11 OF 2018, BA-24NCvC-1582–12 OF 2018, BA-24NCvC-1584–12 OF 2018 AND BA-24NCvC-1586–12 OF 2018
WONG KIAN KHEONG J
1 OCTOBER 2019

Land Law — Acquisition of land — Objection against award — Whether party for whom state authority had acquired land and was responsible for paying the land compensation had right to object to land administrator's compensation award — Whether such party ('paymaster') was a 'person interested in any scheduled land' under s 37(1) of Land Acquisition Act 1960 ('the LAA') — Whether paymaster had right to file Form N under s 38(1) of LAA requiring land administrator ('LA') to refer objections concerning compensation award to court for determination — Whether paymaster could not file valuation report on acquired land for first time in Land Reference Court when it had not submitted one at land enquiry — Whether paymaster was entitled to attend land enquiry to directly tender valuation report and make submissions but could only perform those tasks through LA's counsel in Land Reference Court — Whether special circumstances had to be shown for court to grant extension of time under s 38(4) of the LAA to file Form N — Whether party applying for such extension of time could not rely upon court's inherent jurisdiction or O 92 r 4 of Rules of Court 2012 for that purpose

Does a party for whom the state authority had compulsorily acquired land and was responsible for paying the land compensation have the right to object to an award of compensation made by a land administrator ('LA') and require the LA to refer its objection to court for determination? This was the crucial question the court had to deal with in the instant case. The plaintiff was awarded a concession by the Malaysian Government to build the West Coast Expressway. To realise that objective, the State Authority of Selangor acquired eight pieces of land under the Land Acquisition Act 1960 ('the LAA') on the plaintiff's behalf. The plaintiff was responsible for paying the compensation for the acquisitions. The LA issued eight awards of compensation to the respective land owners after holding enquiries which the plaintiff attended but in which it did not adduce any valuation reports or make any submissions. None of the land owners objected to the LA's awards. The plaintiff, however, decided to object to the awards for being excessive but reckoned that it was out of time to file a Form N under s 38(1) of the LAA to require the LA to refer its objection to court for determination. Hence, the plaintiff filed the instant eight

originating summonses ('OS') seeking an extension of time to file the Form N, and an order that (after it had filed the Form N) the LA refer the eight matters to the Land Reference Court. The plaintiff argued that: (a) the court had discretion to extend time under s 38(4) and (6) of the LAA or in exercise of the court's inherent jurisdiction and/or O 92 r 4 of the Rules of Court 2012; (b) the plaintiff had shown 'special circumstances' for its application to be allowed; (c) the plaintiff had done a valuation of the eight acquired lots which showed the eight awards were excessive; (d) the plaintiff was not given a right to be heard at the land enquiries; (e) the LA was biased against or unfair towards the plaintiff; and (f) in three of the land acquisitions, the land owners were wrongly compensated for loss of buildings which they had erected in breach of the condition of land use.

Held, dismissing all the eight OS:

(1) Even though the plaintiff was the paymaster of the eight awards, it was not a 'person interested' in the eight acquired lots within the meaning of s 37(1) of the LAA. Accordingly, the plaintiff was not entitled to file the Form N under s 38(1) of the LAA in respect of the eight acquired lots. On this ground alone, the eight OS herein had to be dismissed (see para 13).

(2) Apart from this court being bound by the Federal Court's decision in *Tenaga Nasional Bhd v Unggul Tangkas Sdn Bhd & Anor and other appeals* [2020] 2 MLJ 721, it was of the view that only 'any person interested in any scheduled land' had the right under s 37(1) of the LAA to object to the LA's award. 'Scheduled land' under s 2(1) of the LAA referred to land that had been acquired by the state authority. The plaintiff was not interested in the 'scheduled land' within the meaning of s 37(1). It was only interested in the amount of compensation it had to pay for the acquisition. In view of the wording in s 37(1), the definition of 'person interested' in s 2(1) of the LAA did not apply to confer a right to file the Form N on a paymaster of the land compensation (see para 12).

(3) The plaintiff also failed to qualify as a 'person interested' under s 37(3) of the LAA because that section, inter alia, concerned acquired land that was to be occupied or used pursuant to Part VII of the LAA. Part VII concerned the State Authority's procurement of land for temporary occupation and use for a period not exceeding three years when the land was needed under s 57(a), (b) or (c) of the LAA. Part VII had no application to the eight acquired lots in the instant case (see para 14).

(4) There was no evidence the LA had breached any rule of natural justice in the conduct of the eight land enquiries. The LA had allowed the plaintiff to attend the enquiries and did not prevent the plaintiff from adducing its own valuation reports or from making any submissions (neither of which the plaintiff did). There was no evidence to show the LA had deprived the

plaintiff of a right to be heard at the enquiries nor was there evidence that the LA was biased against or unfair towards the plaintiff (see paras 16–17).

(5) Even assuming the plaintiff was a 'person interested' in the eight acquired lots no special circumstances were shown under s 38(4) of the LAA for the court to exercise its discretion to grant the plaintiff an extension of time to file the Form N. The eight OS herein were filed after long periods of delay after the respective awards were made. The length of the delays, computed from the expiry of six weeks from the dates of the respective awards, ranged from eight months to about two years and eight months (see paras 18 & 30–31).

(6) The court's inherent jurisdiction and/or O 92 r 4 of the Rules of Court could not be invoked for the purpose of applying for an extension of time to file the Form N since s 38(4) of the LAA specifically provided for that purpose (see para 24).

(7) The eight OS were defective for not citing the respective land owners as co-defendants as they would have been adversely affected if the court had allowed the plaintiff to file the Form N and if, as a result, the amount of land compensation was reduced (see paras 34 & 36).

(8) The LAA did not stipulate that a breach of condition of land use would disentitle a land owner from claiming compensation for compulsory acquisition. Where such breaches had happened in three of the land acquisitions herein, the LA had affirmed affidavits to state that the amount of compensation in each case had been reduced by reason of the said breaches (see 39 & 42(f)).

(9) Notwithstanding that a paymaster of land compensation was not a 'person interested in any scheduled land', the paymaster could: (a) participate directly in the LA's enquiry by submitting its own valuation report and making submissions to assist the LA to decide on the appropriate amount of land compensation; and (b) participate indirectly in a land reference by making its submissions and relying upon its valuation report through the LA's counsel in the Land Reference Court. If a paymaster had not adduced a valuation report at the enquiry (which was the case in the instant matters), it could not rely upon one at the land reference because the LA had not considered the said report in making his award (see para 15).

(10) The court had no power to order the LA to file the Form M under s 36(2) of the LAA (see paras 40–41 & 42(g)).

[Bahasa Malaysia summary

Adakah pihak yang telah memperoleh tanah secara wajib oleh pihak berkuasa negeri dan bertanggungan untuk membayar pampasan tanah berhak untuk

membantah pemberian pampasan yang dibuat oleh pentadbir tanah ('PT') dan memohon kepada PT untuk mengemukakan bantahan beliau ke mahkamah untuk ditentukan? Ini adalah persoalan penting yang harus dihadapi mahkamah dalam kes semasa. Plaintif telah diawadkan dengan konsesi oleh Kerajaan Malaysia untuk membina Lebuhraya Pantai Barat. Untuk merealisasikan objektif tersebut, Pihak Berkuasa Negeri Selangor telah mengambil alih lapan bahagian tanah di bawah Akta Pengambilan Tanah 1960 ('APT') bagi pihak plaintif. Plaintif bertanggungjawab bagi membayar pampasan untuk pengambilan tersebut. PT mengeluarkan lapan awad pampasan masing-masing kepada pemilik tanah setelah mengadakan siasatan yang dihadiri oleh pihak plaintif tetapi di mana pihaknya tidak mengemukakan laporan penilaian atau membuat sebarang hujahan. Tidak ada pemilik tanah yang membuat bantahan terhadap pemberian awad oleh LA. Plaintif, bagaimanapun, memutuskan untuk membantah pemberian tersebut kerana berlebihan tetapi menganggap bahawa terlambat untuk mengemukakan Borang N di bawah s 38(1) APT untuk mewajibkan PT mengemukakan bantahan ke Mahkamah untuk ditentukan. Oleh itu, plaintif memfailkan lapan saman pemula ('SP') yang memohon lanjutan masa untuk memfailkan Borang N, dan perintah agar (setelah memfailkan Borang N) PT merujuk lapan perkara tersebut ke Mahkamah Rujukan Tanah. Plaintif berpendapat bahawa: (a) mahkamah mempunyai budi bicara untuk melanjutkan masa di bawah s 38(4) dan (6) APT atau dalam menjalankan bidang kuasa mahkamah dan/atau A 92 k 4 Kaedah Kaedah Mahkamah 2012; (b) plaintif telah menunjukkan 'keadaan khas' agar permohonannya dibenarkan; (c) plaintif telah membuat penilaian terhadap lapan lot yang diperoleh yang menunjukkan lapan awad tersebut adalah berlebihan; (d) plaintif tidak diberi hak untuk didengar semasa siasatan tanah; (e) PT bersikap berat sebelah atau tidak adil terhadap plaintif; dan (f) dalam tiga pengambilalihan tanah, pemilik tanah secara salah diberi ganti rugi atas kehilangan bangunan yang mereka dirikan yang melanggar syarat penggunaan tanah.

Diputuskan, menolak kesemua lapan SP:

(1) Walaupun plaintif adalah pembayar kepada lapan awad tersebut, namun bukan 'orang yang berkenaan' dalam lapan lot yang diperoleh dalam maksud s 37(1) APT. Oleh itu, plaintif tidak berhak memfailkan Borang N di bawah s 38(1) APT berkenaan dengan lapan lot yang diperoleh. Atas dasar ini, lapan SP di sini harus ditolak (lihat perenggan 13).

(2) Selain mahkamah ini terikat dengan keputusan Mahkamah Persekutuan dalam *Tenaga Nasional Bhd v Unggul Tangkas Sdn Bhd & Anor and other appeals* [2020] 2 MLJ 721, ianya berpendapat bahawa hanya 'mana-mana orang yang berminat mana-mana tanah berjadual' mempunyai hak di bawah s 37(1) APT untuk membantah pemberian LA. 'Tanah berjadual' di bawah s 2(1) APT merujuk kepada tanah yang

telah diambil alih oleh Pihak Berkuasa Negeri. Plaintif tidak berminat dengan 'tanah berjadual' dalam erti s 37(1). Ia hanya berminat dengan jumlah pampasan yang harus dibayar untuk pemerolehan tersebut. Merujuk kepada ayat dalam s 37(1), definisi 'orang yang berminat' dalam s 2(1) APT tidak terpakai untuk memberikan hak untuk memfailkan Borang N kepada seorang pembayar pampasan tanah (lihat perenggan 12).

(3) Plaintif juga gagal memenuhi syarat sebagai 'orang yang berminat' di bawah s 37(3) APT kerana seksyen tersebut, antara lain, berkenaan dengan tanah yang akan diduduki atau digunakan merujuk kepada Bahagian VII APT. Bahagian VII berkaitan dengan tanah yang diambil alih oleh Pihak Berkuasa Negeri untuk kedudukan sementara dan penggunaan untuk jangka waktu yang tidak melebihi tiga tahun ketika tanah tersebut diperlukan di bawah s 57(a), (b) atau (c) APT. Bahagian VII tidak memiliki permohonan untuk lapan lot yang diperoleh dalam kes semasa (lihat perenggan 14).

(4) Tidak ada bukti bahwa PT telah melanggar aturan keadilan dalam melakukan siasatan lapan tanah tersebut. PT telah membenarkan plaintif menghadiri siasatan dan tidak menghalang plaintif untuk mengemukakan laporan penilaiannya sendiri atau membuat sebarang hujahan (yang mana tidak dilakukan oleh pihak plaintif). Tidak ada bukti yang menunjukkan bahawa PT telah menghalang hak plaintif untuk didengar semasa siasatan dan tidak ada bukti bahawa PT bersikap berat sebelah atau tidak adil terhadap plaintif (lihat perenggan 16–17).

(5) Walaupun menganggap plaintif adalah 'orang yang berminat' dalam lapan lot yang diperoleh, tidak ada keadaan khas yang ditunjukkan di bawah s 38(4) APT untuk mahkamah menggunakan budi bicaranya untuk membenarkan lanjutan masa kepada pihak plaintif untuk memfailkan Borang N. Lapan SP di sini difailkan setelah sekian lama tertangguh setelah awad dibenarkan. Tempoh kelewatan, yang dikira dari berakhirnya enam minggu dari tarikh awad masing-masing, di antara lapan bulan hingga kira-kira dua tahun dan lapan bulan (lihat perenggan 18 & 30–31).

(6) Bidang kuasa mahkamah dan/atau A 92 k 4 Kaedah-Kaedah Mahkamah tidak dapat dipakai untuk tujuan membenarkan lanjutan masa untuk memfailkan Borang N kerana s 38(4) APT yang diperuntukkan secara khusus untuk tujuan itu (lihat perenggan 24).

(7) Lapan SP tersebut cacat kerana tidak menyebut pemilik tanah masing-masing sebagai defendan bersama kerana mereka akan terjejas sekiranya mahkamah membenarkan plaintif memfailkan Borang N dan jika, sebagai hasilnya, jumlah pampasan tanah dikurangkan (lihat perenggan 34 & 36).

(8) APT tidak menetapkan bahawa pelanggaran syarat penggunaan tanah akan menghalang pemilik tanah dari menuntut pampasan untuk pengambilalihan. Sekiranya pelanggaran seperti itu terjadi dalam tiga pengambilalihan tanah di sini, PT telah mengikrarkan afidavit untuk menyatakan bahawa jumlah pampasan dalam setiap kes telah dikurangkan oleh sebab pelanggaran tersebut (lihat 39 & 42(f)).

(9) Walaupun pembayar pampasan tanah bukanlah 'orang yang berminat dengan tanah berjadual', pembayar boleh: (a) mengambil bahagian secara langsung dalam siasatan PT dengan menyerahkan laporan penilaiannya sendiri dan membuat hujahan untuk membantu PT memutuskan jumlah pampasan tanah yang sesuai; dan (b) mengambil bahagian secara tidak langsung dalam rujukan tanah dengan membuat hujahan dan bergantung pada laporan penilaiannya melalui peguam PT di Mahkamah Rujukan Tanah. Sekiranya seorang pembayar tidak mengemukakan laporan penilaian pada siasatan (yang terjadi dalam hal semasa), ia tidak boleh bergantung pada rujukan tanah kerana PT tidak mempertimbangkan laporan tersebut dalam membuat awadnya (lihat perenggan 15).

(10) Mahkamah tidak memiliki kuasa untuk mengarahkan PT untuk memfailakn Borang M di bawah s 36(2) APT (lihat perenggan 40–42(g)).]

Cases referred to

Damai Motor Kredit Sdn Bhd & Anor v Kementerian Kerja Raya Malaysia [2012] MLJU 1803; [2015] 1 CLJ 44, CA (folld)

Lau Cher Hian v Collector of Land Revenue, Muar [1971] 1 MLJ 96, FC (distd)

Lim Nee Thiam & Ors v Collector of Land Revenue, Kuala Pilah [1985] CLJ Rep 561, HC (distd)

Moo Hon Yee v S Abdul Rahman bin PAK Shaik Abdul Kader [2018] MLJU 1822; [2019] 2 AMR 399, HC (refd)

Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan [2008] 6 MLJ 763; [2009] 1 CLJ 13, FC (folld)

Tenaga Nasional Bhd v Unggul Tangkas Sdn Bhd & Anor and other appeals [2020] 2 MLJ 721; [2018] 4 CLJ 285, FC (folld)

Legislation referred to

Land Acquisition Act 1894 [IND] s 18(1)

Land Acquisition Act 1960 ss 2(1), 8, 12(1), 36(2), (2)(a), (2)(b), (2)(c), (2)(d), (2)(e), (2)(f), 37(1), (3), 38(1), (3), (3)(a), (4), (5), (6), (7), 40A(2), 45(2), 57(a), (b), (c), Part VII, First Schedule, Second Schedule, Forms M, N, O

National Land Code

Rules of Court 2012 O 92 r 4

Koh Yew Chong (Denise Ng Wai Ling with him) (Lee & Koh) for the plaintiff.
Wan Nur Nadia bt Wan Azizi (Muhammad Haziq bin Hashim with him) (Selangor State Legal Advisor Office) for the defendant.

Wong Kian Kheong J:

(Eight applications for extension of time to file references to High Court regarding Land Administrator's eight awards of compensation for land acquisition)

INTRODUCTION

[1] The plaintiff company ('plaintiff') has been awarded a concession ('concession') by the Government of Malaysia to, among others, construct the West Coast Expressway ('highway').

[2] For the purpose of the construction of the highway, the Selangor State Authority ('SA') has acquired eight pieces of land (eight acquired lots) under the Land Acquisition Act 1960 ('the LAA').

[3] The land administrator ('LA') has given eight awards of compensation ('eight awards') to the owners of the eight acquired lots ('eight land owners').

[4] Pursuant to the concession, the plaintiff was the 'paymaster' of the eight awards.

[5] The eight land owners did not object to the amount of the eight awards under s 37(1) of the LAA. As such, the eight awards were not referred by the LA to the Land Reference Court pursuant to s 38(1) and (5) of the LAA.

[6] In these eight originating summonses ('eight OS'), the plaintiff applies to court for, among others, the following orders:

(a) an order to extend time for the plaintiff to object to the amount of the eight awards by filing Form N ('Form N') as provided in the Second Schedule to the LAA (Second Schedule); and

(b) after the plaintiff has filed Form N, the LA shall be ordered to file Form M in the Second Schedule ('Form M') to refer the eight awards to the Land Reference Court ('eight land references').

[7] The plaintiff and LA have agreed for these eight OS to be heard and decided together.

ISSUES

[8] The following questions arise in these eight OS:

(a) whether the plaintiff (the paymaster of the eight awards) is a person interested in the eight acquired lots within the meaning of s 37(1) of the LAA who is entitled to:

(i) object to the amount of the eight awards by filing Form N; and

(ii) require the LA to make the eight land references pursuant to s 38(1) and (5) of the LAA.

If the plaintiff is not a person interested in the eight acquired lots, is there any manner to safeguard the interest of paymasters of land compensation?

(b) in making the eight awards:

(i) was the LA biased against the plaintiff?

(ii) whether the LA had deprived the plaintiff of its right to be heard; and

(iii) had the LA acted fairly towards the plaintiff?

(c) if the plaintiff is a person interested in the eight acquired lots within the meaning of s 37(1) of the LAA:

(i) whether the court can extend time for the plaintiff to file Form N under:

(1) s 38(4) of the LAA;

(2) s 38(6) of the LAA; or

(3) the court's inherent jurisdiction, inherent power and/or O 92 r 4 of the Rules of Court 2012 ('the RC');

(ii) if s 38(4) of the LAA confers power on the court to extend time for the plaintiff to file Form N, what is the test to be applied by the court under s 38(4) of the LAA? In this regard, there are conflicting Federal Court decisions on the interpretation of s 38(4) of the LAA;

(iii) if s 38(4) of the LAA provides for the 'special circumstances' test, has the plaintiff discharged the burden to satisfy the court that there exists special circumstances in the eight OS for an extension of time for the plaintiff to file Form N?

(iv) whether the plaintiff should have joined the eight land owners in these eight OS; and

(v) if a land owner has breached a condition imposed by the SA regarding the use of the land by erecting a building on the land, does such a breach disentitle the land owner from claiming compensation for the building? and

(d) if the court extends time under s 38(4) of the LAA for the plaintiffs to file Form N, can the court order the LA to file Form M pursuant to s 36(2) of the LAA?

THE PLAINTIFF'S SUBMISSION

[9] In support of the eight OS, the plaintiff's learned counsel has contended as follows, among others:

(a) the court has a discretion to extend time to allow the plaintiff to file Form N under s 38(4) and (6) of the LAA as well as pursuant to the court's inherent power under O 92 r 4 of the RC; and

(b) the eight OS should be allowed on the following grounds:

(i) the plaintiff's land valuer had conducted a valuation of the eight acquired lots ('plaintiff's valuation reports). Based on the plaintiff's valuation reports, the eight awards are excessive;

(ii) the plaintiff has shown special circumstances for the court to allow the eight OS;

(c) as the paymaster of the eight awards, the plaintiff had not been given a right to be heard before the LA made the eight awards;

(d) the LA had been biased against the plaintiff in making the eight awards;

(e) the LA had not acted fairly towards the plaintiff in deciding the eight awards; and

(f) in Originating Summonses Nos BA-24NCVC-1582–12 of 2018, BA-24NCVC-1584–12 of 2018 and BA-24NCVC-1586–12 of 2018 ('three OS'), the condition for the use of the three pieces of land had been breached by the erection of buildings on the land in question. Hence, there should not be any compensation to the land owners in the three OS for those buildings.

IS THE PLAINTIFF A PERSON INTERESTED IN EIGHT ACQUIRED LOTS?

[10] I reproduce below the definition of 'person interested' in ss 2(1), 12(1), 37(1), (3) and 45(2) of the LAA:

s 2(1)

'person interested' includes every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant at will;

12 *Enquiry by the Land Administrator*

(1) *On the date appointed under of subsection 10(1) the Land Administrator shall make*

full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case, according to the consideration set out in the First Schedule:

Provided that the Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under section 14.

37 *Application to Court*

(1) *Any person interested in any scheduled land who*, pursuant to any notice under section 10 or 11 or any person interested pursuant to any compensation made under section 35 or Part VII who, *has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to —*

(a) the measurement of the land;

(b) *the amount of the compensation*;

(c) the persons to whom it is payable;

(d) the apportionment of the compensation.

...

(3) *Where the total amount of any award exceeds thirty thousand ringgit, any Government or any person or corporation on whose behalf such land was acquired or being occupied or used pursuant to Part VII, shall be deemed to be a person interested and may make objections on any of the grounds specified in subsection (1).*

45(2) *Save in so far as they may be inconsistent with anything contained in this Act, the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act.* (Emphasis added.)

[11] Firstly, I refer to *Tenaga Nasional Bhd v Unggul Tangkas Sdn Bhd & Anor and other appeals* [2020] 2 MLJ 721; [2018] 4 CLJ 285, at paras [8], [28]–[39] and [42], (*TNB*'s case), a judgment of the Federal Court delivered by Zulkefli Ahmad Makinuddin PCA as follows:

[8] The Federal Court allowed the motion for leave to appeal by TNB on the following questions of law:

1. *Whether the filing of an objection vide Form N pursuant to (s 37 of the LAA) is the only mode available for a paymaster to be a party in a land reference proceeding before the High Court?*

2. *Whether the paymaster has a right to be made a party in a land reference proceeding before the High Court to safeguard its legal interest where the award of compensation made by the Land Administrator is being subject to challenge at the High Court?*

3. *Whether the paymaster upon being given leave to intervene in the land reference can be denied the right to participate and file a valuer's report if necessary under the Third Schedule to the (LAA)?*

A ...

[28] *We noted that the undisputed facts in the present case showed that during the land acquisition hearing before the Land Administrator, the landowner, Unggul Tangkas, was present. TNB was also present. It was also not disputed that during the course of the acquisition hearing, TNB was not named as a party thereto. Neither was it present there*
B *as an intervener. Neither did it present any valuation report pertaining to the scheduled land that was the subject matter of the acquisition exercise*.

[29] *We are of the view the provisions of the Act made it clear that the lodging of form N is essential if a party seeks to object to an award in land reference proceedings as it is aimed at an expeditious resolution of the objection to the award*.

C [30] *As regards TNB's application in encl 7 to intervene in the acquisition proceedings under O 15 r 6(2)(b) of the (RC), we agree with the submission of learned counsel for Unggul Tangkas that s 45(2) of the Act does not lend assistance to TNB's cause of action. Section 45(2) of the Act does not allow for an enlargement of the scope of the specific framework under the Act*. ...

D [31] *We are of the view that s 45(2) (LAA) only provides for the complementary role of (RC) to the (LAA) if it does not run contrary to the provisions of the Act (O 15 r 6(2)(b) of the RC) in the context of the present case does not have any application. On this point, we cite with approval the observation made by His Lordship KN Segara JCA in the case of Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Inch Kenneth Kajang Rubber Ltd &*
E *Anor and other appeals* [2011] 4 MLJ 403; [2011] 1 CLJ 95 as follows:

> *In the overall scheme and context of the Land Acquisition Act, any application by the appellant under O 15 r 6(2)(b) RHC 1980 to be made a party, is inappropriate. It would amount to an abuse of the process of the court and an attempt to circumvent the clear and unambiguous provisions of the (LAA) as regards to the manner and*
F *circumstances in which 'persons interested' under the (LAA) are to participate in proceedings either before the Land Administrator at an enquiry or, in court, upon a reference by the Land Administrator upon any objection to an Award. Filing of Form N is the most appropriate and the only mode available under the (LAA) to any person interested under the (LAA) to become a party in a Land Reference at the High Court relating to an objection to the amount of compensation*.

G [32] Learned counsel for TNB referred to us the Court of Appeal case of *Sistem Penyuraian Trafik KL Barat Sdn Bhd v Kenny Heights Development Sdn Bhd & Anor* [2009] 3 MLJ 809; [2009] 4 CLJ 57 to support his contention that our courts have recognised an intervener's application pursuant to (O 15 r 6(2)(b) of the RC) *can be*
H *made in land reference proceedings. This case of Sistem Penyuraian Trafik KL Barat Sdn Bhd* was decided earlier than the Court of Appeal case of *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd*. The case of *Sistem Penyuraian Trafik KL Barat Sdn Bhd* was a split decision wherein the majority was of the view that (O 15 r 6(2)(b) RC) was applicable in consideration whether SPRINT as an 'interested party' could be rightly added in the land reference proceedings. It would appear that there was a
I conflict between these two decisions of the Court of Appeal on the issue of intervention by a party in land reference proceedings before the panel of the Court of Appeal in the present case.

[33] *On a careful examination of the above two conflicting decisions of the Court of Appeal cases, we are of the view that the decision in the case of Sistem Lingkaran*

Lebuhraya Kajang Sdn Bhd which was followed by the Court of Appeal in the present case was correctly decided on this issue. The court in Sistem Lingkaran Lebuhraya Kajang Sdn Bhd had considered the totality of the circumstances of the case in the light of the scheme of the Act and the kind of special regime it has created, such that (O 15 r 6(2)(b) RC) is not applicable for the purpose of making a party either a co-respondent or an intervener. We fully endorse the views expressed and the decision arrived at in the case of Sistem Lingkaran Lebuhraya Kajang Sdn Bhd.

[34] *As regards the case of Damai Motor Kredit Sdn Bhd & Anor v Kementerian Kerja Raya Malaysia* [2012] MLJU 1803; [2015] 1 CLJ 44 *relied on by TNB on the application of (O 15 r 6(2)(b) RC) to acquisition proceedings, we are of the view the factual matrix of the said case is distinguishable from the present case. In the Damai Motor Kredit case, the appellant/landowner whose land had been acquired under the Act was not informed and named as a party in the originating summons ('OS') filed by the respondent (Kementerian Kerja Raya Malaysia) in the OS application for extension of time to file Form N to the Land Administrator who had awarded a sum of award which was subsequently objected to by the respondent. The appellants did not know about the OS and were never served with the application. They only became aware of the OS after the application for an extension of time to file Form N with the Land Administrator was granted. They subsequently filed in the High Court a summons-in-chambers (the SIC) for leave to intervene in the action by the respondent and to set aside the court order granting the respondent the OS.*

[35] *The High Court dismissed the SIC which led to the appeal by the appellants to the Court of Appeal. The Court of Appeal allowed the appellants' appeal and inter alia held that clearly the appellants in the Damai Motor Kredit case were persons interested who were within the contemplation of s 2 (LAA). The position of the appellants/landowner in the Damai Motor Kredit case was clearly made out, where their interests were at stake as landowners. The question of them applying to be made interveners did not arise at all. They were the original parties in the proceedings before the Land Administrator. As such, they ought to be named in the OS proceedings by the respondent.*

[36] *We are of the view the Court of Appeal in the Damai Motor Kredit had rightly ruled that the learned High Court Judge was in error when he denied the appellants' application to be made interveners. With respect, however, the same cannot be said of TNB in our instant appeal. As was alluded to in the preceding paragraphs of this judgment, the factual matrix of the present case would not warrant a similar treatment for TNB.*

[37] *It is our judgment that TNB had no legal interest in the land reference proceedings. TNB being the paymaster, it had at the highest only a pecuniary interest. (See the case of Tohtonku Sdn Bhd v Superace (M) Sdn Bhd* [1992] 2 MLJ 63; [1992] 2 CLJ 1153; [1992] 1 CLJ Rep 344)*. The evidence in the present case showed that TNB was not aggrieved by the award but was merely apprehensive that the outcome of the land reference proceedings in the High Court may adversely affect its pocket. At any rate, TNB's rights on whose behalf acquisition proceedings were instituted (see s 43 [LAA]) and whose interests must be considered by the court whether they have objected or not (see s 44(2) [LAA]) without the need for intervention.*

[38] *We are of the view that it was for the Land Administrator to defend the award and, as declared by the Privy Council in the case of Collector of Land Revenue v Alagappa Chettiar* [1971] 1 MLJ 43; [1968] 1 LNS 31, *the Land Administrator was fully*

entitled to lead such evidence as he considered necessary to do so.

[39] *In the present case, we take the view that the High Court was correct to deny TNB's right to tender any valuer's report in the land reference proceedings as every opportunity to tender the same was available to TNB who was present during the enquiry. We agree with the views expressed by the Court of Appeal in the present case that the interest of TNB was clearly taken care by the legal team representing the Land Administrator. Anything that needed to be submitted for TNB must have been taken up by the legal team. We would add here that the same process could be replicated during the land reference proceedings before the High Court Judge. Land reference proceedings should not be protracted and delayed in the High Court by unnecessary interlocutory proceeding such as an application to intervene in encl. 7 filed by TNB.*

...

[43] *For the reasons above-stated, we would answer question 1 posed in these appeals in the affirmative. Other than the Land Administrator, only a person who has properly objected to an award under s 37 [LAA] is entitled to be a party to the land reference proceedings with all the rights that entails. Question 2 should be answered in the negative. A paymaster is not so entitled as a matter of course. Question 3 ultimately hinges on TNB succeeding in these appeals in respect of questions 1 and 2. Therefore, there is no necessity for us to answer question 3. In any event, the question of valuer's report is a matter that ultimately concerns the second respondent (the Land Administrator) in defending the award.* (Emphasis added.)

[12] As a matter of stare decisis, I am bound by the Federal Court's judgment in *TNB*'s case. In my respectful view, *TNB*'s case is fortified by the following reasons:

(a) s 37(1) of the LAA confers a right to object to, among others, the amount of land compensation, on any 'person interested in any scheduled land'. Section 2(1) of the LAA defines 'scheduled land' as land included in a schedule prepared under s 8 of the LAA, namely land to be acquired by SA.

The plaintiff is only interested in the amount of land compensation to be paid by the plaintiff pursuant to the concession. The plaintiff is not interested in the 'scheduled land' within the meaning of s 37(1) of the LAA; and

(b) our s 37(1) of the LAA is materially different from s 18(1) of the Indian Land Acquisition Act 1894 ('the LAA (India)'). Section 18(1) of the LAA (India) provides as follows:

18 *Reference to court*

(1) *Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the*

apportionment of the compensation among the persons interested. (Emphasis added.)

Section 18(1) of the LAA (India) uses the term 'person interested' and not the phrase 'person interested in any scheduled land' (employed in our s 37(1) of the LAA). Accordingly, Indian cases on s 18(1) of the LAA (India) which allow a paymaster of land compensation to intervene in land references, do not apply in the context of our s 37(1) of the LAA.

In view of the wording of s 37(1) of the LAA (as explained above), the definition of 'person interested' in s 2(1) of the LAA does not apply to confer a right to file Form N on a paymaster of the land compensation. In any event, all definitions in s 2(1) of the LAA apply to the other provisions in LAA 'unless the context otherwise requires'. The context of s 37(1) of the LAA does not require the application of the definition of 'person interested' in s 2(1) of the LAA to s 37(1) of the LAA.

[13] Based on *TNB*'s case and the reasons explained in the above para 12, even though the plaintiff is the paymaster of the eight awards, the plaintiff is not a person interested in the eight acquired lots within the meaning of s 37(1) of the LAA. Accordingly, the plaintiff is not entitled to file Form N under s 37(1) of the LAA in respect of the eight acquired lots. On this ground alone, the plaintiff is not entitled to any extension of time to file Form N and as a corollary, the eight OS must be dismissed with costs.

[14] I have not overlooked s 37(3) of the LAA. Section 37(3) of the LAA deems a person (X) to be a 'person interested' when the following two conditions in s 37(3) of the LAA are fulfilled:

(a) the total amount of the award exceeds RM30,000; and

(b) X is any Government or any person or corporation on whose behalf land is to be occupied or used pursuant to Part VII of LAA ('second condition'). Part VII of LAA concerns SA's procurement of land for temporary occupation and use for a period not exceeding three years when the land is needed under s 57(a), (b) or (c) of the LAA.

Part VII of LAA does not apply to the eight acquired lots. As the second condition is not met in this case, the plaintiff is not a person interested in the eight acquired lots under s 37(1) read with (3) of the LAA.

HOW CAN A PAYMASTER OF LAND COMPENSATION PROTECT ITS INTEREST?

[15] Notwithstanding the fact that a paymaster of land compensation is not a person interested in scheduled land, I am of the following view:

(a) in LA's enquiries:

(i) a paymaster may participate directly in LA's enquiry ('enquiry') by submitting to the LA any valuation report of the scheduled land prepared by the paymaster's valuer ('paymaster's valuation report'). The LA is empowered to receive the paymaster's valuation report pursuant to the proviso to s 12(1) of the LAA;

(ii) the LA should not reject the paymaster's valuation report because the LA is mandatorily required by s 12(1) of the LAA to make a 'full enquiry' into the value of the scheduled land (LA's duty). It is clear that s 12(1) of the LAA is a mandatory provision because the legislature has used the term 'shall' in that provision;

(iii) the LA's duty is satisfied when the LA considers all valuation reports regarding the scheduled land, including the paymaster's valuation report;

(iv) the paymaster, its representative and solicitor may provide submission, written and oral (paymaster's submission), to assist the LA to decide the 'appropriate' amount of land compensation as required by s 12(1) of the LAA. In fulfillment of the LA's duty, the LA should consider the paymaster's submission before deciding an award; and

(v) the above approach:

(1) assists the LA to assess the amount of land compensation which the LA considers to be 'appropriate' as mandated by s 12(1) of the LAA; and

(2) safeguards a paymaster's interest with regard to the amount of land compensation; and

(b) in land references:

(i) a paymaster may participate *indirectly* through the LA's learned counsel. The paymaster's submission may be made to the Land Reference court through the LA's learned counsel — please see *TNB*'s case, at para [39];

(ii) if a paymaster's valuation report has been tendered in an enquiry, through the LA's learned counsel, the paymaster may submit to court regarding the paymaster's valuation report;

(iii) if a paymaster's valuation report has not been adduced in an Enquiry, the paymaster cannot rely (through the LA's learned counsel) on the paymaster's valuation report in the land reference — please see *TNB*'s case, at para [39]. This is because the LA has not considered the paymaster's valuation report in arriving at the award. Furthermore, the Land Reference court has the following valuation reports to decide the Land Reference:

(1) the valuation reports of the Valuation and Property Services Department of the Government ('JPPH's valuation reports'); and

(2) the reports of the land owner's valuer ('land owner's valuation reports'); and

(iv) the court allows an indirect participation by a paymaster in the Land Reference (through the LA's learned counsel) because such an approach:

(1) assists the court to decide whether the LA's award is a 'fair and reasonable amount of compensation' for the land acquisition within the meaning of s 40A(2) of the LAA. Section 40A(2) of the LAA provides as follows:

> *Where the objection before the Court is in regard to the amount of the compensation, the Court shall appoint two assessors (one of whom shall be the valuation officer employed by the Government) for the purpose of aiding the Judge in determining the objection and in arriving at a fair and reasonable amount of compensation*. (Emphasis added.); and

(2) ensures that the paymaster's interest in the land compensation is safeguarded.

DID THE LA BREACH TWO RULES OF NATURAL JUSTICE IN MAKING EIGHT AWARDS?

Was the LA biased against the plaintiff?

[16] I am satisfied that the LA has not breached the first rule of natural justice in the conduct of the eight enquiries regarding the eight acquired lots. This decision is premised on the following evidence and reasons:

(a) the LA had allowed the plaintiff's representative to attend the eight enquiries;

(b) the LA did not prevent the plaintiff from adducing any valuation report in the eight enquiries;

(c) the plaintiff was not prevented by the LA from making any submission to the LA in the eight enquiries;

(d) there was no evidence to prove on a balance of probabilities that the LA had been biased against the plaintiff in the eight enquiries; and

(e) if the LA had been biased against the plaintiff during the eight enquiries, the plaintiff or its solicitors would have complained in writing to the LA regarding such a bias.

Whether the LA had breached second rule of natural justice

[17] I have no hesitation to decide that the LA has complied with the second rule of natural justice in the conduct of the eight enquiries. I also decide that the LA had acted fairly towards the plaintiff in the eight enquiries. These decisions are made based on the following evidence and reasons:

(a) there was no evidence to show that the LA had deprived the plaintiff a right to be heard at the eight enquiries. On the contrary, the LA had allowed the plaintiff's representative to attend the eight enquiries;

(b) for reasons best known to the plaintiff, the plaintiff did not adduce any valuation report or make any submission in the eight enquiries; and

(c) the plaintiff did not make any complaint in writing to the LA that:

(i) the plaintiff's right to be heard had been denied by the LA; and

(ii) the LA had acted unfairly against the plaintiff in the eight enquiries.

WHETHER THE COURT SHOULD EXTEND TIME FOR THE PLAINTIFF TO FILE FORM N

[18] As an alternative to the above Part D, I will now assume that the plaintiff is a person interested in the eight acquired lots. Consequently, I will now discuss the court's power to extend time for the plaintiff to file Form N.

Basis for court's power to extend time to file Form N

[19] The plaintiff's learned counsel has relied on s 38(4) and (6) of the LAA, the court's inherent jurisdiction, inherent power and/or O 92 r 4 of the RC in support of the eight OS.

[20] I reproduce below s 38(1), (3), (4), (5), (6) and (7) of the LAA:

> 38(1) *Any objection made under section 37 shall be made by a written application in Form N to the Land Administrator requiring that he refer the matter to the Court for its determination.*
>
> ...
>
> (3) *Every application under subsection (1) shall be made —*
>
> (a) *if the person making it was present or represented before the Land Administrator at the time when the Land Administrator made his award, within six weeks from the date of the Land Administrator's award under* section 14 or compensation made under section 35 or Part VII;
>
> (b) in other cases, within six weeks of the receipt of the notice from the Land Administrator under section 16, paragraph 35(2)(c), subsection 58(1) or

section 59 or within six months from the date of the Land Administrator's award under sections 14, 35 or Part VII, whichever period shall first expire.

(4) *The period of six weeks prescribed by paragraph (3)(a) and the periods of six weeks and six months prescribed by paragraph (3)(b) shall not be capable of enlargement by any Court, except in such special circumstances as the Court may think fit.*

(5) *On receiving any application under subsection (1) the Land Administrator shall, subject to section 39, within six months refer the matter to the Court by a reference in Form O.*

(6) *Where the Land Administrator has failed to make a reference to the Court within the period specified in subsection (5), the Land Administrator or any person interested may apply to the Court for an extension of the said period.*

(7) Where the Land Administrator has failed to make a reference to the Court within the period specified in subsection (5) or within any extension of such period under subsection (6), the Court may, on application by any person interested deal with the objection under subsection 38(1) *in such manner as it deems fit, and in order to enable the Court to do so, the Court may give such directions to the Land Administrator or to any person interested as it deems necessary or expedient, and without prejudice to the generality of this power, such directions may include a direction requiring the Land Administrator or any other person to appear before the Court to give evidence, or to produce before the Court such records, or other documents, as the Court may specify.* (Emphasis added.)

[21] Firstly, the plaintiff had not filed Form N regarding the eight acquired lots pursuant to s 37(1) read with s 38(1) of the LAA. Hence, s 38(5) of the LAA cannot apply to the plaintiff because s 38(5) of the LAA only applies when the LA has received Form N under s 38(1) of the LAA.

[22] Section 38(6) of the LAA only applies when the LA has failed to refer to court pursuant to s 38(5) of the LAA. If s 38(5) of the LAA cannot apply to the plaintiff as explained in the above para 21, the plaintiff cannot therefore rely on s 38(5) of the LAA in the eight OS.

[23] The plaintiff's representative was present when the eight awards were made. As such, the six-week period under s 38(3)(a) of the LAA would apply to the plaintiff. In the circumstances, this court can only extend time for the plaintiff to file Form N under s 38(4) of the LAA.

[24] As Parliament has specifically provided in s 38(4) of the LAA for the court's discretionary power to extend time to file Form N, there cannot be any resort to the court's inherent jurisdiction, inherent power and/or O 92 r 4 of the RC — please see s 45(2) of the LAA.

What is the test for court to extend time under s 38(4) of the LAA?

[25] In *Lau Cher Hian v Collector of Land Revenue, Muar* [1971] 1 MLJ 96, at p 98, Ong CJ (Malaya) decided as follows in the Federal Court regarding the court's discretionary power to extend time pursuant to s 38(4) of the LAA:

> *When a landowner is to be dispossessed, albeit with compensation, natural justice demands that he should be heard, unless by his own conduct he disentitles himself to such treatment. That, I believe, to be the reason why the court is given a discretion to temper the rigidity of the law. 'Special grounds' were not defined and rightly so. Was not hardship a special ground, when the party was not in the least at fault? Except that she did not possess the volume of 1960 legislation for reference was she so much to blame? I do not think that hardship, bona fide mistake or mere 'ignorance of the law' should be left out altogether when considering special grounds. What are special grounds must be decided according to the facts of each case.* (Emphasis added.)

[26] The interpretation of s 38(4) of the LAA in *Lau Cher Hian* has been followed by Peh Swee Chin J (as he then was) in the High Court case of *Lim Nee Thiam & Ors v Collector of Land Revenue, Kuala Pilah* [1985] CLJ Rep 561, at 563–565, as follows:

> *The decision in Lau Cher Hian's case may attract some objection from purist jurists on account of some fettering tendency from the wording of subsection providing for enlargement of time; it has nevertheless, an incidental merit that it comes close to the popular notions of justice entertained by the man in the street. The Act, which is highly technical, provides by Form H, for a landowner to accept or refuse the offer of compensation, yet singularly fails to provide the landowner with the further information that in the event of his refusal, he can apply to have the matter referred to Court for its determination within six weeks etc. Landowners, especially those from the rural area, will very often be complacent in thinking that by stating their refusal to accept the offer, the next move would come from the collector and that they need do nothing in the meantime. Many a landowner has found himself time-barred in these circumstances. The decision clearly lays down in my view, that hardship, ignorance of law, bona fide mistake, combined with absence of any fault on the part of an applicant praying for extension of time, e.g. an applicant not sleeping on his rights, may constitute special circumstances sufficient for the Court to exercise its discretion to grant extension of time in such cases.*
>
> *So long as nothing is done by the legislature for 'the fundamentals of fair procedure' by the insertion of a clause advising landowners of the availability of the procedure of making an application for the matter to be referred to Court for its determination within six weeks etc. from the date of the award in Form H, and making it mandatory for a collector of land revenue to inform landowners at the enquiry of such right of such application, the Court shall continue to lend an ear to such pleas of hardship, ignorance of the law and bona fide mistake when applications for such extension of time are before the Court.* (Emphasis added.)

[27] I shall now refer to the judgment of Alauddin Mohd Sheriff CJ (Malaya) (as he then was) in the Federal Court case of *Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan* [2008] 6 MLJ

763; [2009] 1 CLJ 13, at [3], [50]–[51], [60]–[61] and [63]–[64] as follows: A

> [3] On 16 July 2007 *the appellant obtained leave to appeal from the Federal Court on the following question*:
>
> > *Whether the non-compliance of the statutory requirements under the Land Acquisition Act 1960 ('the Act') in particular, paragraph 1(1)(b) and paragraph 2(d) of the First Schedule of the Act and Article 13(1) of the Federal Constitution by the Land Administrator, in making the award under section 14 of the Act, amounts to special circumstances under section 38(4) of the Act.* B
>
> ...
>
> [50] *In order for the appellant to succeed under s 38(4) it had to establish that there existed special circumstances to warrant the court to exercise that discretion. The onus therefore was on the appellant.* C
>
> [51] *The discretion to be exercised by the court was not absolute and unqualified and had to be exercised sparingly (see Sungei Bongkoh Estate Sdn Bhd v Pentadbir Tanah Daerah Kuala Muda* [1994] MLJU 441; [1995] 1 CLJ 400). D
>
> ...
>
> [60] *Had the appellant remained vigilant in making the application for enlargement of time, they would have had the opportunity to ventilate their case before the High Court.* E
>
> [61] *But the appellant had chosen to remain nonchalant and treated their right with apathy.*
>
> ...
>
> [63] *What amounts to special circumstances under s 38(4) of the Act have been the subject of various decision of our courts previously. We perceive that this is an area of law that is trite and settled (see Lau Cher Hiam v Collector of Land Revenue, Muar* [1971] 1 MLJ 96; *Lai Tai v Collector of Land Revenue* [1960] MLJ 82). F
>
> [64] *Based on the above reasons we are unanimous that the answer to the above question should be in the negative. In the result this appeal is dismissed with costs* ... (Emphasis added.) G

[28] *Singapore Para Rubber Estate* has been applied by the Court of Appeal in a judgment delivered by Abdul Aziz Rahim JCA in *Damai Motor Kredit Sdn Bhd & Anor v Kementerian Kerja Raya Malaysia* [2012] MLJU 1803; [2015] 1 CLJ 44, at paras [25]–[26]. H

[29] It is clear that the interpretation of s 38(4) of the LAA by *Lau Cher Hian* is different from the construction adopted in *Singapore Para Rubber Estate*. I am inclined to follow *Singapore Para Rubber Estate* because: I

(a) *Singapore Para Rubber Estate* is a decision of our apex court. When the Federal Court decided *Lau Cher Hian*, our highest court then is the Privy Council. In other words, at the time of the decision in *Lau Cher*

Hian, the Federal Court was only the second highest court (after the Privy Council). As a matter of stare decisis, I am bound to follow our highest court's judgment in *Singapore Para Rubber Estate*; and

(b) the decision in *Singapore Para Rubber Estate* is in consonance with the wording of s 38(4) of the LAA (the period of six weeks prescribed by para (3)(a) and the periods of six weeks and six months prescribed by para (3)(b) shall not be capable of enlargement by any court, except in such special circumstances as the court may think fit). It is difficult to envisage 'special circumstances' in s 38(4) of the LAA to include 'hardship', 'bona fide mistake', 'ignorance of the law' and 'absence of fault' as laid down in *Lau Cher Hian* and *Lim Nee Thiam*. Lastly, as decided in *Singapore Para Rubber Estate*, at para [51], the court's discretionary power pursuant to s 38(4) of the LAA should be exercised sparingly.

Whether the plaintiff has proven special circumstances for court to extend time

[30] Based on *Singapore Para Rubber Estate*, at para [50], the plaintiff has the burden to satisfy the court that there exists special circumstances for an extension of time for the plaintiff to file Form N regarding the eight awards.

[31] I am of the view that the plaintiff has failed to discharge the onus to show that there are special circumstances for an extension of time for the plaintiff to file Form N regarding the eight awards. This decision is premised on the following evidence and reasons:

(a) the plaintiff's representative was present at the eight enquiries and at the time when the eight awards were made. There was no reasonable explanation in any of the plaintiff's affidavits regarding why the plaintiff could not have filed Form N regarding the eight awards within the six-week period stipulated in s 38(3)(a) of the LAA (six-week period); and

(b) based on the affidavits filed in the eight OS, I have tabulated below the plaintiff's delay in respect of the eight awards (from the date of expiry of the six-week period to the date of filing of the eight OS):

No	OS No	Date of Award	Date of expiry of six weeks from date of award (expiry date)	Length of delay (from one working day after expiry date to date of filing of OS)

1.	BA-24NCVC-1392–11 of 2018 (filing date: 14 November 2018)	1 November 2017	13 December 2017	11 months (from 14 December 2017 to 14 November 2018)
2.	BA-24NCVC-1394–11 of 2018 (filing date: 14 November 2018)	7 November 2017	19 December 2017	Ten months 25 days (from 20 December 2017 to 14 November 2018)
3.	BA-24NCVC-1398–11 of 2018 (filing date: 15 November 2018)	13 April 2017	25 May 2017	One year five months 20 days (from 26 May 2017 to 15 November 2018)
4.	BA-24NCVC-1400–11 of 2018 (filing date: 15 November 2018)	7 November 2017	19 December 2017	Ten months 26 days (from 20 December 2017 to 15 November 2018)
5.	BA-24NCVC-1402–11 of 2018 (filing date: 15 November 2018)	23 January 2018	6 March 2018	Eight months eight days (from 7 March 2018 to 15 November 2018)
6.	BA-24NCVC-1582–12 of 2018 (filing date: 28 December 2018)	29 September 2017	10 November 2017	One year one month 17 days (from 11 November 2017 to 28 December 2018)
7.	BA-24NCVC-1584–12 of 2018 (filing date: 28 December 2018)	5 October 2017	16 November 2017	One year one month 11 days (from 17 November 2017 to 28 December 2018)
8.	BA-24NCVC-1586–12 of 2018 (filing date: 28 December 2018)	1 March 2016	12 April 2016	Two years eight months 15 days (from 13 April 2016 to 28 December 2018)

From the above table, the plaintiff's delay is substantial and ranges from eight months eight days to two years eight months 15 days!

[32] I should add that *Lau Cher Hian* and *Lim Nee Thiam* allowed extensions of time to land owners to file Form N after the expiry of the six-week period. These eight OS do not concern land owners but a concessionaire who seeks an extension of time to file Form N to reduce the amount of land compensation! In other words, *Lau Cher Hian* and *Lim Nee Thiam* are easily distinguishable from these eight OS.

[33] I have not overlooked the plaintiff's valuation reports. I am not able to accept the plaintiff's valuation reports to support the eight OS because firstly, the plaintiff's valuation reports have not been adduced at the eight enquiries —

please see *TNB*'s case, at para [39]. Secondly, the eight awards had not been made without any basis because the LA had considered JPPH's valuation reports and land owners' valuation reports before making the eight awards.

EIGHT LAND OWNERS SHOULD HAVE BEEN MADE PARTIES IN EIGHT OS

[34] The eight land owners may be adversely affected by the eight OS. This is because if the court allows the plaintiff to file Form N regarding the eight awards, there is a possibility that the Land Reference Court may reduce the amount of land compensation in the eight land references. I rely on the Court of Appeal's judgment in *Damai Motor Kredit*, at para [22], as follows:

> [22] We are not persuaded by the argument put forth by the learned Senior Federal Counsel. *Though we agree that there is no provision in the Act or in any case law which lay down the rule that an application for extension of time must be served on an interested person other than the Land Administrator, in the circumstances of the case, we think that justice would require the application to be served on the appellants (land owners). There is no dispute of fact that the inquiry as to the compensation in this case had been concluded for almost over a year and the appellants had accepted the award made by the Land Administrator. In fact the Land Administrator had taken possession of the land with the issuance of Form K. Furthermore, it is in evidence and this is not being challenged that at the inquiry as to the amount of compensation to be awarded, the respondent was represented by its representative by Tuan Haji Mahadi bin Latiff who is the Director of JKR Negeri Johor, and he did not object to the award made by the Land Administrator. Clearly therefore, the appellants are interested parties and their interest would be affected by any order to be made by the court in allowing the extension of time for the respondent to file an objection to the award*. (Emphasis added.)

[35] *Damai Motor Kredit* has been approved by the Federal Court in *TNB*'s case, at paras [34]–[36].

[36] Based on *Damai Motor Kredit*, the eight OS are defective due to the plaintiff's failure to cite the eight land owners as co-defendants.

EFFECT OF BREACH OF CONDITION OF LAND USE

[37] When a land owner uses his or her land in a manner which breaches a condition of land use, there may be adverse consequences for the land owner as provided by the National Land Code ('the NLC'). It is decided in *Moo Hon Yee v S Abdul Rahman bin PAK Shaik Abdul Kader* [2018] MLJU 1822; [2019] 2 AMR 399, at para [14], as follows:

> [14] The Express Condition is conclusive under s 89(b) of the NLC. *I am of the view that when the defendant operates a grocery shop on the Land, this breaches the Express Condition under s 109(2)(b) of the NLC (defendant's breach). The defendant's breach has the following adverse consequences for both the plaintiff and defendant*:

(1) *both the plaintiff and defendant are liable to a fine by the LA under s 127(1A)(a) and (b) of the NLC*; or

(2) *the Land is liable to be forfeited to the State Authority pursuant to s 127(1)(a) and (b) of the NLC*. (Emphasis added.)

[38] In the three OS, the SA did not take any action under the NLC against the land owners regarding the latter's breach of the condition of land use (breach of condition of land use).

[39] I am not able to accept the plaintiff's contention that a breach of condition of land use disentitles a land owner from claiming compensation for compulsory land acquisition. Such a submission is not borne out by any provision in the LAA. Subpara 1(2) of the First Schedule to the LAA provides that in assessing the market value of the scheduled land, the effect of any express or implied condition of land use 'shall be taken into account'. In any event, the LA in the three OS had affirmed affidavits to state that the amount of land compensation had been reduced by reason of the breach of condition of land use.

WHETHER THE COURT CAN ORDER LA TO FILE FORM M

[40] In the eight OS, assuming the court grants an extension of time for the plaintiff to file Form N, the plaintiff has prayed for a consequential order to compel the LA to file Form M (so as to refer the eight awards to the Land Reference court).

[41] Assuming I extend time under s 38(4) of the LAA for the plaintiff to file Form N regarding the eight awards, the court can only order pursuant to s 38(5) of the LAA for the LA to refer the eight awards to the Land Reference court by way of Form O in the Second Schedule (not by way of Form M). This is because according to s 36(2) of the LAA, the LA has a discretion to refer by way of Form M for the determination of the Land Reference court any matter enumerated in s 36(2)(a) to (2)(f) of the LAA. Section 36(2) of the LAA provides as follows:

The Land Administrator may, at any time of his own motion by application in Form M refer to the Court for its determination any question as to —

(a) the true construction or validity or effect of any instrument;

(b) the person entitled to a right or interest in land;

(c) the extent or nature of such right or interest;

(d) the apportionment of compensation for such right or interest;

(e) the persons to whom such compensation is payable;

(f) the costs of any enquiry under this Act and the persons by whom such costs shall be borne. (Emphasis added.)

SUMMARY OF THE COURT'S DECISION

[42] Based on the above evidence and reasons, the eight OS are dismissed with costs on the following grounds:

(a) notwithstanding the fact that the plaintiff is the paymaster of the eight awards, the plaintiff is not a person interested in the eight acquired lots within the meaning of s 37(1) of the LAA and cannot therefore file Form N to object to the eight awards;

(b) LA had not breached the two rules of natural justice in the conduct of the eight enquiries. Nor had the LA failed to act fairly towards the plaintiff in the eight enquiries;

(c) the court has a discretionary power to extend time for the plaintiff to file Form N under s 38(4) of the LAA and not under:

(i) s 38(6) of the LAA; or

(ii) the court's inherent jurisdiction, inherent power or O 92 r 4 of the RC;

(d) as regards the application of s 38(4) of the LAA, this court applies *Singapore Para Rubber Estate* and not *Lau Cher Hian*. Based on *Singapore Para Rubber Estate*, the plaintiff has failed to discharge the burden to satisfy the court that there exists special circumstances for an extension of time for the plaintiff to file Form N regarding the eight awards;

(e) the eight land owners should have been cited as co-defendants in the eight OS because they may be adversely affected if the court allows the eight OS;

(f) the LAA does not provide that a breach of condition of land use shall disentitle a land owner from claiming compensation for compulsory land acquisition; and

(g) according to s 36(2) of the LAA, the court has no power to order the LA to file Form M.

Order accordingly.

Reported by Ashok Kumar